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ANNEX C OPERATIONAL ADMINISTRATION

APPENDIX I SPILL FUNDING PROCEDURES

TAB A - DOCUMENTATION AND COST RECOVERY PROCEDURES

Generally, responsible parties are held liable for all damages and costs incurred as a result of an oil pollution incident. In order to recover costs, expenses must be properly documented to provide the responsible party with an accurate accounting of payments due. Furthermore, if litigation is required, documentation must be admissible in federal district courts. The procedures outlined in this tab are designed to meet such requirements.

The National Pollution Funds Center (NPFC) in Arlington, VA, can provide OSC's with valuable information relating to fund administration and Cost Recovery. NPFC provides funding to various environmental response organizations for timely abatement and removal activities related to oil spills; furthermore, with the help of the Dept. of Justice, they recover the costs of removal activities or damages from those responsible for oil pollution incidents.

NPFC has also written the Technical Operating Procedures Manual (TOPS). This manual can be used to assist the OSC with answers to any questions which might arise during an incident; furthermore, all required forms and reports in relation to oil spill funding are contained in this manual. A copy of this manual can be obtained by contacting the CCGDELEVEN (m) office at 310 980-4300 (X280).

The State of California's lead agency in responding to oil spills in marine waters is the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR). OSPR can provide to other state agencies and local governments information relating to the administration of Oil Spill Response Trust Fund and cost recovery. The fund can be used to promptly cover the cost of response, containment and cleanup of oil spill into marine waters. In addition, the OSPR can recover response costs or damages from responsible parties with the Attorney General's assistance.

Some important key players for the OSC when discussing spill funding procedures are the Case Officer and the Contracting Officer. Their roles in a removal action and the support they can provide to the OSC are as follows:

Case Officer - NPFC assigns a Case Officer to each pollution case. The Case Officer provides the continuity needed to pursue cost recovery; he or she is the one mind that pays attention to the entire case, not just a specific part of it. The Case Officer teams up with a financial management specialist and a claims specialists to gain what is needed to move forward with the case. Any questions which might arise can be directed to the Case Officer for answers, this will eliminate any external demands from the OSC and allow him or her to concentrate on their primary duty, removal. The Case Officer will come out to the scene when specifically requested by the OSC. This can be accomplished by either calling NPFC directly via the National Response Center (NRC) at (800) 424-8802, or the request can be made via Pollution Report (POLREP). Additional information is also provided throughout this appendix.

Contracting Officer - The Contracting Officer can provided expertise in the area of contracting for supplies and/or services in excess of \$25,000.00. Also, he or she has technical expertise in issuance of

Basic Ordering Agreements (BOA) and non-BOA's. Any questions which might arise during a removal activity can be addressed to the Contracting Officer by either contacting them during normal working hours at (510) 437-5915, or after working hours they can be reached by calling the Communications Center (COMMCEN) at (510) 437-3673. COMMCEN will then contact the duty Contracting Officer and inform them of the request for assistance.

An NPFC approved alternate record keeping system for government and state agencies, must be an existing system for documenting activities and costs associated with removal under OPA. Alternate systems will be approved by the NPFC in a timely fashion.

For resource documentation purposes, a three level system has been developed to help distinguish routine incidents from the more complex cases. The OSC determines which level best applies to each incident. The following criteria is designed to assist the OSC in making this determination:

Level I - Routine

A routine incident is one where total costs to the government will not exceed \$50,000.00

Level II - Moderately Complex

A moderate incident could be defined as one where the total costs are between \$50,000.00 and \$200,000.00.

Level III - Significantly Complex

A significantly complex incident differs from a moderate incident in the total costs which exceed \$200,000.00.

OSC resource documentation procedures have changed dramatically from the old way of doing business. With the incorporation of the three level system, the OSC responsibility shifts from being ultimately responsible for verifying each and every cent expended, to only verifying that the work or services were in fact authorized and received. Although this does not relieve the OSC from the responsibility of ensuring that ceiling costs aren't exceeded, it does help ease the burden of auditing each cost; furthermore, the OSC can now shift the manpower resources from cost documentation to the field where it's needed most. Below are some general guidelines pertaining to the OSC's responsibility for resource documentation in each level.

LEVEL I

The OSC is required to monitor the daily activities of other government agencies and contractors involved in removal activities; however, the other government agencies and contractors aren't required to submit resource documentation on a daily basis. After the removal activities have ended, the other government agencies and contractors will submit their resource documentation in a timely manner and in the correct format to the OSC.

LEVEL II

In a level II case, other government agencies and contractors are responsible for preparing and submitting resource documentation to the OSC on a daily basis and in the correct format.

This documentation must be verified daily by the OSC as to authorized activities.

LEVEL III

The OSC responsibilities are the same as the level II case; however, because of the complexity of these cases, the OSC may request contracted personnel to prepare the actual resource documentation.

In each level listed, the other government agencies and contractors are responsible for submitting their invoices on a timely basis. Other government agencies should submit an SF-1080 and the contractors use their normal invoicing procedures. The OSC should review resource documentation submitted by each response agency, compare the daily resource documentation against the SF-1080's and invoices, and certify the documentation as to the receipt of services reflected on the documentation.

Further guidance on the PIDRRS is provided at the end of this tab in the form of a Technical Operating Procedures (TOPS) excerpt. This information will include the actual forms to be used, such as the SF 1080's.

TAB B - OSC ACCESS TO THE FUND

The OSC requests via phone call, an issuance of a Federal Project Number (FPN) and a corresponding ceiling authorization from CCGD11 Marine Safety Division at 310 980-4300 (X280). If the call is after working hours, the division duty officer can be reached by calling the District Operations Center (OPCEN) at 310 980-4400. The OPCEN will then contact the Duty Officer and inform him/her of the request. A request via message to the Marine Safety Division must follow the phone conversation as soon as possible. Once the duty officer is contacted, he or she will call you back with the following questions:

1. The name of all known vessels and/or facilities involved.
2. Substance spilled and estimated amount (if known).
3. The source of the discharge or substantial threat of discharge.
4. The responsible party (if known).
5. The location and date of the discharge.
6. The identification of the body of water impacted or threatened
7. The initial ceiling amount requested for obligation under the appropriate FPN.
8. The planned obligations under this FPN (ie. EPA/ERT costs).
9. The cleanup contractor(s) selected (if any).

Once the questions have been addressed, the FPN is then issued and a ceiling established; furthermore, the Marine Safety Division will follow up by message the confirmation of the FPN and ceiling. These procedures shall continue to be followed if it appears that costs are going to be higher than originally estimated, and the OSC anticipates a request for an increase to the ceiling.

All POLREPS and other messages related to the incident where the fund has been accessed shall

include the OSC, NPFC, FINCEN, and the MLCPAC Contracting Officer as info addressees, in addition to current reporting requirements.

If no funding has been expended against an FPN for response/removal, the OSC shall notify the Marine Safety Division duty officer. The Marine Safety Division will then deactivate the FPN, and notify the appropriate offices via message of the deactivation.

The OSC shall ensure that obligations from the fund remain within the established ceiling, and if necessary, promptly request ceiling increases from the Marine Safety Division.

All purchases, contracts, services, and authorizations of activity have costs which must be applied against the ceiling. Each contractor or agency is responsible to keep track of their costs during the removal and to stay inside the ceiling given them by the OSC or request more if needed.

In keeping track of the ceiling, the OSC must remember to subtract all known costs, such as purchase orders and/or credit card purchases. These are easy to track due to their exact costs at the time of purchase. Also, subtract all obligations against the ceiling. These include contracts with other government agencies and contractors. Finally, all estimated costs such as travel orders should also be tracked. This can be accomplished by using the estimated travel costs on each individual travel order.

Once the pollution fund is opened, the OSC has authority to make open market purchase obligations up to \$25,000 per transaction for supplies and \$2,000 for services. These transactions supplement, as needed, the supplies and services provided by the primary cleanup contractor.

A contractor which has a Basic Ordering Agreement (BOA) established must be selected over one that has none except as noted below. BOA contractors are initially hired by verbal order, followed by an Authorization to Proceed (ATP) or written contract Optional Form 347 (OF-347) for each incident. Direction must include the specific number of personnel, equipment needed, estimated cost, and the FPN noted on the form. The OSC authorized spending ceiling for a BOA contractor is set at \$25,000 per incident, per BOA contractor selected (ie. two BOA contractors can be hired to perform different tasks on one incident at a maximum of \$25,000 each). In the event the costs for BOA contractor services will exceed the OSC's limit, the MLCPAC Contracting Officer must be called immediately for further contracting actions.

When the BOA contractor cannot provide a timely and/or adequate response, selection of a non-BOA contractor is authorized. The Contracting Officer is the only person that is authorized to contract for non-BOA contractors. If the appropriate Contracting Officer cannot be reached in a timely manner, the OSC is authorized to issue non-BOA purchase orders, on an emergency basis only, with a limit not to exceed \$25,000 per incident. The OSC must contact the Contracting Officer within twenty-four hours after exercising this emergency authority.

If the OSC determines that another agency (federal, state, local, or Indian tribe) can assist in a removal effort, the OSC may authorize that agency to perform removal actions. The OSC must then complete a Pollution Removal Funding Authorization (PRFA) which specifies who is authorized to do what, when, and for how much.

Contractors shall submit original invoices to the OSC as required, and mail copies of the invoices to the

Finance Center. After review, the OSC will certify and mail the invoices with dailies to the MLC Contracting Officer for approval. After the Contracting Officer compares the two invoices, they will be mailed to the Finance Center for payment.

In the event that a state or local government agency is authorized to perform removal actions, the State of California, Office of Oil Spill Prevention and Response (OSPR) will function as finance liaison with the federal government.

If federal funds are not available or will not be available in an adequate period of time, and a responsible party does not exist or is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from a marine oil spill, then the State of California Oil Spill Response Trust Fund shall be used to pay necessary costs for responding to, containing, or cleaning up the oil spill.

State and local government agencies shall submit their payment request via an SF-1080 to the OSPR. If federal funds are available, the OSPR will submit the SF-1080's to the OSC for approval and forwarding to the NPFC for payment. If federal funds are not available as stated above, the OSPR will review the bills for completeness and to ensure that all costs are eligible for payment. If the documentation is not complete, the OSPR will promptly notify the state or local government agency of what information is missing. If the OSPR concludes that certain costs are ineligible for payment, it will delete those costs from the payment request and will promptly send a report of the disallowed costs to the state or local government agency.

After the documents are reviewed and found to be complete and satisfactory, the OSPR will authorize and process the payment request.

Other government agencies shall submit their bill via an SF-1080 to the OSC. After review, the OSC will certify and mail the SF-1080's and the dailies to NPFC for payment.

The OSC must report the costs of all obligations on POLREPS in the following categories:

1. The authorized ceiling for the case.
2. Cumulative financial obligations to date (including the cost limits set in: contracts, inter-agency agreements, delivery orders, purchase orders, travel orders, MIPR's, etc).

The following accounting string is to be used on each case once given authorization to do so by the OSC. The intention behind using a standard accounting string, is to alleviate the units from using their OG-30 accounts, and then seeking reimbursement from the fund at a later date. It is to the unit's advantage to use this to the maximum extent possible, but as a reminder, the OSC must authorize the expenditure.

2/H/SZ/111/95/0/FPN/OPFAC/####

FPN - Federal Project Number that is issued by the Marine Safety Division to the OSC.

- object code

2110 overseas site visit/operational

- 2100 domestic site visit/operational
- 2211 transportation of government owned property
- 2204 truck rental
- 2521 contractual services (DOD)
- 2522 contractual services (Other Govt Agencies)
- 2523 contractual services (Other)
- 2662 supplies and materials

Further guidance on the PIDRRS is provided at the end of this tab in the form of a Technical Operating Procedures (TOPS) excerpt. This information will include the actual forms to be used, such as government personnel and equipment; contractor personnel and equipment; filling out the SF 1080's and PRFA's.

TAB C - STATE ACCESS TO THE FUND

The following procedures are excerpts from the National Pollution Funds Center's Technical Operation Procedures (TOPS) for State Access to the Fund. A full copy of the TOPS instruction can be obtained by contacting the Eleventh Coast Guard District Office at phone number 310 980-4300 (X280).

Section 1012(d)(1) of the Oil Pollution Act of 1990 provides that the President, upon request of the Governor of a State or his or her designated state official, may obligate the Oil Spill Liability Trust Fund (Fund) for payment in an amount not to exceed \$250,000.00 per incident for removal costs consistent with the NCP. The removal costs must be required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of discharge, or oil. Pursuant to the authority delegated to the Coast Guard in Executive Order 12777, the Coast Guard has published an interim regulation (33 CFR Part 133) to implement the provision of section 1012(d)(1) of OPA 90.

Funding under section 1012(d)(1) will herein be referred to as "State Access." These procedures focus on information that is needed to support cost recovery efforts of the NPFC.

These procedures do not address the provisions of Section 1012(d)(2) of OPA 90 (e.g., advance agreements with individual States, advance payments from the Fund, or access to the Fund by political subdivisions of a State).

State Access to the Fund provides a new avenue for States to receive Federal funds for immediate removal costs resulting from their response to actual or threatened discharges of oil. State Access does not supersede or preclude the use of existing Federal payment regimes. The State should not seek and will not receive payments for the same costs from more than one payment regime. Generally, there are two other payment regimes which the States may initiate to obtain Federal funding for oil spill incident removal actions:

1. **ACTING AS FOSC CONTRACTOR.** State agencies may perform removal actions under the direct supervision of the FOSC. In these situations, the FOSC issues an Oil Spill Response Authorization to the State to establish a contractual relationship and obligate the Fund. With this method of funding the State is not limited to \$250,000.00 per incident, and the FOSC is actively directing the State's response actions.

2. **CLAIMS.** Section 1012(a)(4) of OPA 90 authorizes use of the Fund for “the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be consistent with the NCP or uncompensated damages”. Regulations describing claims procedures are found in 33 CFR Part 136. States may submit claims for uncompensated removal costs, which may include those salaries, equipment, and administrative costs directly related to a specific incident. A State may submit claims for removal costs directly to the Fund even if the responsible party is known. Claims other than for removal costs must first be submitted to the designated responsible party. Claims payments are not limited to \$250,000 per incident.

For additional information regarding these procedures or related subjects, State representatives, FOSCs, and other interested parties are urged to contact the NPFC at 703 235-4767.

REQUESTING FUNDS

Pursuant to 33 CFR 133.5, 133.7, and 133.13, the following will be evaluated by the FOSC when contacted by the State requesting funds under section 1012(d)(1):

1. Is the incident eligible for immediate removal under the Clean Water Act, as amended by OPA 90?
2. Is the substance discharged/threatening discharge oil?
3. Did the incident occur after August 18, 1990?
4. Is the aggregate amount of the request equal to or less than \$250,000?
5. Are the proposed actions consistent with the NCP (including 40 CFR 300.305(c)’s requirement that a reasonable effort is made to have the discharger voluntarily and promptly perform removal actions)?
6. Are the proposed levels of response, proposed actions, and amounts requested appropriate for the circumstances?
7. Has the State the means to complete the immediate removal?

COSTS INCURRED BEFORE FOSC CONTACT

Immediate removal costs involving a specific oil discharge incident which, due to exigent circumstances, were incurred by the State prior to the initial request to the FOSC for State Access, are allowable under State Access if the FOSC determines that: 1) notification is timely; 2) the response was consistent with the magnitude of the incident; and 3) costs incurred were otherwise reasonable under the circumstances and in all other respects were allowable.

CONTACTING THE FOSC

In accordance with 33 CFR 133.9, the Governor or designated State Official (henceforth referred to as the State Official) shall request access to the Fund from the FOSC who is pre-designated for the area

of the incident. The pre-designated FOSC can be reached by calling the National Response Center at 800 424-8802.

EVALUATION BY THE FOSC

Considering the NCP, 33 CFR 133.15, and the criteria set above, the FOSC determines whether or not the proposed removal actions are eligible for funding. The FOSC may contact the NPFC case officer whenever questions arise. The decision by the FOSC is final. The FOSC may respond as follows:

1. If the FOSC concludes that the incident is not eligible for Federal removal under the NCP, that any of the criteria stated in the previous paragraphs are not met, or otherwise does not find State Access to be the appropriate removal mechanism for the incident, he/she will deny the request for State Access. The FOSC may conclude that the incident is eligible for removal under the NCP, but that a Federally led response is more appropriate to the situation. In this event, the FOSC may decide to utilize State Resources through contract. Whenever a request for State Access is denied for any reason (including a decision for a Federally led response or a decision for no Federal response), the FOSC will, by the next business day following his/her decision, notify the NPFC Case Management Division and District (m) office, as appropriate, of the request and the specific reason(s) for denial.

2. If the FOSC concludes that all of the criteria in the paragraphs listed above are fulfilled and that State Access to the Fund is the best method to address the incident, he/she may then approve the request for State Access and contact the cognizant Coast Guard District (m) office for assignment of a case-specific Federal Project Number (FPN) and a removal action funding ceiling (ceiling). The FOSC is responsible for ensuring that the State official is expeditiously informed of the FPN and Ceiling.

OBLIGATION OF THE FUND AND ASSIGNMENT OF THE FPN

The FOSC will pass the same information to the Coast Guard district representative that he/she would pass for other types of oil discharge responses when accessing the Fund. The FOSC identifies this as a State Access removal which he/she has approved, requests assignment of an FPN/ceiling, and provides the name and telephonic/electronic/postal mail contact information of the requesting State official. The Fund is obligated for payment to the State and a cooperative agreement between the Coast Guard and the State is in effect when the Coast Guard district assigns the FPN and ceiling to the FOSC. All further communications by all parties regarding the oil discharge incident should include the FPN and ceiling.

Not later than the next business day following the assignment of the FPN/ceiling to the FOSC, the Coast Guard district transmits an official Coast Guard message that announces the assignment of the FPN/ceiling. This message should include the NPFC, the FOSC, and the cognizant Regional Response Team (RRT) members as addressees, and should also be faxed to the cognizant State official. In addition to the information which includes as a reference the telephone conference between the FOSC and the Coast Guard district representative in which the FPN and ceiling were assigned, the message specifically notes that the funds were provided for State Access, and includes the telephonic, electronic, and mail contact information of the State Official.

RAISING THE CEILING

Requests for raising the amount of the FPN's ceiling are made to the cognizant FOSC. The procedure is identical to that outlined in previous paragraphs of this Tab. Requests for a higher ceiling shall not raise the overall ceiling above the \$250,000/incident limit.

OIL DISCHARGE REMOVAL AUTHORIZATION

An "Oil Discharge Removal Authorization" documents the cooperative agreement between the State and the Coast Guard. Upon receipt from the cognizant Coast Guard district of the notification of the assignment of the FPN/ceiling, the NPFC case officer forwards the Oil Discharge Removal Authorization and a certifications package to the State official. The State official should contact the NPFC case officer listed in the Authorization if any questions arise.

TERMINATION OF STATE ACCESS FUNDING

If, at any time after approving a request for State Access, the FOSC determines that State Actions are no longer applicable to the immediate removal action, the FOSC may terminate State Access to the Fund. In this event, the State may receive payment for its allowable immediate removal costs that were incurred in good faith prior to the termination. While it is normally expected that the State official will notify the FOSC via POLREP upon determination that the immediate removal is complete, the FOSC retains the authority to unilaterally declare completion of a Federal removal and terminate further Federal funding of the removal at any time the FOSC determines that immediate removal is complete.

DESIGNATION OF SOURCE AND IDENTIFICATION OF RESPONSIBLE PARTY

In accordance with the Section 300.305 of the NCP and 33 CFR 133.23, the State shall promptly complete a thorough investigation to determine the source of discharge and to identify the responsible party(ies). The State should include this information in its POLREPs (POLREP information can be found in Annex C, Appendix II, Tab C) and pass it directly to the NPFC case officer and FOSC via telephone as soon as it is known.

Following receipt from the State of source and RP information, the NPFC case manager issues a Letter of Designation to the RP(s) to notify them of their designation as an RP and their responsibilities as an RP under Federal law. Also, the NPFC will send a copy of the Letter of Designation to the FOSC and State official.

REMOVAL COSTS

Funds provided to the State under OPA 90 Section 1012(d)(1) are for "immediate removal" of a discharge or substantial threat of a discharge. Pursuant to OPA 90 Sections 1001(31) and 1012(a)(1), and 33 CFR 133.13, allowable removal costs are all direct costs incurred to prevent, minimize, and mitigate oil pollution from the specific incident, including the costs of monitoring removal actions taken by the RP and the costs to prepare required documentation. State Access may only be used to pay for removal costs that are directly related to the specific incident. Costs must generally be incurred at the site or in support of on-site activities. State Access to the Fund is for immediate removal or remediation costs, or the costs of natural resource damage assessments. If questions arise, contact the NPFC case manager. Allowable costs include:

A. CONTRACT COSTS

The state may be paid for contract costs incurred specifically for the removal action (e.g., cleanup contractor costs, waste disposal contractor costs, administrative contractor costs (for on-site cost documentation), etc.).

B. OUT OF POCKET EXPENSES

The State may also be paid for unbudgeted out-of-pocket State costs incurred specifically for the removal action, (e.g., OSHA and RCRA costs for the incident, travel to the site, consumable materials purchased specifically for the removal action, transportation or shipping costs for bringing materials to the site, equipment rentals, etc.).

The documentation should show the cost of each unit of each item of work per day (or other time period set in the controlling agreement for that item) and the extended total cost. As discussed above, State salary and equipment usage costs should be determined using the State's standard rates.

Provide documentation that the amount invoiced, shown on receipts, or presented on travel vouchers was paid or authorized for payment. State certification that the cost is authorized for payment and will be paid through normal State processes is sufficient for requesting payment from the Fund, provided that any later corrections or changes to the amount paid are promptly reported to the NPFC.

State salary, equipment, and administrative costs are documented as follows for each day of removal activity:

1. Date
2. Identification (employee ID, equipment ID or description, function for removal action)
3. Category (e.g., grade level, equipment type)
4. Number of hours charged for that day
5. Rate
6. Total cost (hours times rate)
7. Cumulative total for all days

INCIDENT REPORT

The State official requesting Fund access should ensure that an Incident Report is submitted to the NPFC and the FOSC within 30 days after the completion of immediate removal activities. Incident Reports are discussed in detail in Appendix II, Tab B of this Annex.

REQUESTING PAYMENT

The State should forward the documents listed below to NPFC (cm). The State will receive payment for allowable immediate removal costs after the documentation has been received and reviewed favorably by the NPFC.

The State requests payment using either 1) SF-1080, Voucher for Transfers Between Appropriations

and/or Funds (preferred), 2) SF-270, Request for Advance or Reimbursement, or 3) an equivalent State invoice acceptable to the NPFC.

Submitting a properly-documented request for a partial payment is encouraged if preparing the submission of a request for full payment would delay the NPFC's receipt of the Incident Report longer than 30 days beyond the completion of the immediate removal.

CERTIFICATIONS

Certain certifications involving cooperative agreements between Federal and State agencies are required by 49 CFR Parts 18, 20, and 29. Accordingly, the State official shall ensure compliance with, sign, and return the following certifications:

1. Certification Regarding Lobbying.
2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.
 - a. The certification for Primary Covered Transactions is required from the State itself.
 - b. The certification for Lower Tier Covered Transactions shall be submitted by the State on behalf of each of its contractors.
3. Certification Regarding Drug-Free Workplace requirements.
 - a. Required from the State to certify its employees. If, in accordance with 49 CFR 29.630(C), the State has a current blanket Drug-Free Workplace certification, the State official may forward a copy of it in lieu of signing an incident-specific certification.

By the act of submitting the request for payment, the State official is certifying that costs incurred were consistent with the advance approval by the FOSC, that costs were directly related to removal actions for the specific incident, and that the State will pay or has paid the amounts presented.

In accordance with 33 CFR 133.19(b), the request for payment, Incident Report, cost documentation, and certifications described above should reach the NPFC no later than 30 days after the completion of immediate removal actions. In the event that certain documentation is unavailable or delayed, the State should submit supplemental request for payment as the additional records become available. This information is needed rapidly to allow the NPFC to expeditiously pay the State and seek reimbursement from responsible parties. In accordance with 49 CFR 18.41(b)(4), the NPFC may deobligate the Fund for payment if all required documentation is not received by the NPFC and found to be complete and satisfactory within 90 days following completion of an immediate removal action. The State is ineligible for payment under 33 CFR 133 following deobligation of the Fund.

REVIEW OF DOCUMENTATION

Upon receipt of the documents in the paragraphs listed above, the NPFC will review them for com-

pleteness and to ensure that all removal costs are eligible for payment. If the documentation is not complete, the NPFC will promptly notify the State of what information is missing. If the NPFC determines that there are costs of an operational nature which may be ineligible for payment, the NPFC will confer with the cognizant FOSC. If the NPFC concludes that certain removal costs are ineligible for payment, it will delete those costs from the payment request made to the USCG Finance Center, and will promptly send a report of the disallowed costs to the State and to the FOSC. If, 90 days following the completion of the immediate removal, the State has failed to submit documentation to the NPFC (which the NPFC finds to be complete and satisfactory), the NPFC may deboligate the Fund for payment of any removal costs which remain unsubstantiated.

PAYMENT PROCESS

After the State documents are reviewed and found to be complete and satisfactory, the NPFC Case Manager authorizes payment and the NPFC Financial Manager promptly processes the payment through the USCG Finance Center.

By requesting State Access to the Fund, the State agrees to cooperate fully in any cost recovery actions and/or litigation to enforce the provisions of OPA 90.

DOCUMENTATION AND THE FOSC

Copies of the FPN/ceiling authorization, Oil Discharge Removal Authorization, Incident Report, cost documentation, and report of disallowed costs are sent to the FOSC for informational purposes only. The FOSC is not obligated to review or retain these documents.

RELATIONSHIP TO COOPERATIVE AGREEMENT REQUIREMENTS

As described in 33 CFR 133.5(c), the Federal Grant and Cooperative Agreement Act of 1977 (31 USC 6301-6308) and 49 CFR Parts 18, 20, 29, and 90 apply to Fund monies obligated for payment under the State Access provisions of Section 1012(d)(1) of the Oil Pollution Act. While compliance with these laws and regulations requires the submission of certain forms/reports from the State to the Federal government, some of the forms/reports have been waived because the nature of immediate removal actions obviates the need for them.

REQUIRED FORMS/REPORTS

The following forms/reports are required by 49 CFR 18, 20, and 29. These forms have not been waived, and should be submitted concurrently with the Incident Report and cost documentation:

1. SF-270, Request for Advance or Reimbursement

This form or the optional/preferred SF-1080 (Voucher for Transfer Between Appropriations) or a State invoice acceptable to the NPFC is used by States to request payment from the Fund.

2. Certification Regarding Lobbying

Required by 49 CFR 20. A copy of this certification is included in the certifications package provided by the NPFC to the State.

3. Certification Regarding Debarment, Suspension, and other Responsibility Matters

Required by 49 CFR 29. A copy of this certification is included in the certifications package provided by the NPFC to the State. The cooperative agreement between the State and the Coast Guard is a primary covered transaction. A contract between the State and a private contractor is a lower-tier covered transaction.

4. Certification Regarding Drug-Free Workplace Requirements

Required by 49 CFR 29. A copy of this certification is included in the certifications package provided by the NPFC to the State (see previous paragraphs for blanket certification exception).

The requirements in 49 CFR Parts 18, 20, and 29 regarding the following specific forms and reports are waived as follows for State Access under 1012(d)(1) of the Oil Pollution Act:

1. SF-424, Application for Federal Assistance

The requirement for use of this form is waived. The request made by the Governor or his/her designated representative to the FOSC for access to the Fund suffices as an application.

2. SF-272, Federal Cash Transactions Report

This form is not required since, under OPA 90 Section 1012(d)(1), the Fund only pays States for costs already incurred.

3. SF-424A, Budget Information - Non-construction Programs

This form is not required since, under OPA 90 Section 1012(d)(1), the Fund only pays States for costs already incurred, and each incident represents a separate agreement between the State and the Fund.

4. SF-424C, Budget Information - Construction Programs

This form is not required because removal actions are not considered construction programs.

5. SF-269A, Financial Status Report

The requirement for this report is waived. The State's request for payment that is submitted with the Incident Report and accompanying cost documentation meets all financial reporting requirements. It is envisioned that each incident would be completed in substantially less than three months.

6. Non-construction performance reports

The requirement is waived. Performance information available from subsequent applications contains sufficient information to meet programmatic needs.

FEDERAL AUDIT

In accordance with 49 CFR 90, acceptance of Federal funds through a cooperative agreement may make the State subject to an annual or biennial Statewide Federal audit of all of its grants and cooperative agreements with the Federal government.

TAB D - DAMAGE ASSESSMENT PROCEDURES

INTRODUCTION

The overall goals of the natural resource damage assessment (NRDA) process are to restore the injured environment and its components to pre-spill conditions and to obtain compensation for all documented losses. In general, this process may require a lengthy period of time to complete the individual phases of documenting injuries, assessing damages, settling claims, and undertaking restoration programs. This document addresses the NRDA process only during its initial stages while response efforts are underway. This document attempts to describe the NRDA process, identify the principle participants in NRDA activities, and clarify the relationship of NRDA within the framework of the Incident Command System (ICS). Additional information is provided concerning NRDA funding and the requirements for specific federal, state, and local permits necessary to collect information for NRDA.

It is highly desirable for all federal and state recognized resource trustees to coordinate their NRDA activities and to consult with local governments and interest groups from the affected area to produce a single NRDA for all injuries to public trust resources. The trustees are encouraged to coordinate these activities with the efforts of a cooperative responsible party (RP) to the extent that trustee responsibilities are not compromised.

(2) BACKGROUND AND STRUCTURE

Oil spill incidents of significance initially lead to two primary actions: a response to contain and cleanup the spilled oil, and an assessment of the injuries to natural resources caused by the pollutant. In 1990, Congress enacted the Oil Pollution Act (OPA 90; 33 U.S.C. 2701 et. seq.). OPA 90 authorizes Federal resource trustees (Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of the Interior), State resource trustees (designated by the governor of each state), federally-recognized Indian tribes, and foreign trustees to seek compensation for injuries to natural resources caused by the discharge of oil. For purposes of this document, these groups are referred to as either “trustees” or “trustee agencies”. In California, the Governor has designated the Secretary of the Resources Agency and the Secretary of the California Environmental Protection Agency as the State Trustees for natural resources within their purview. The Lead State Trustee is determined based upon the types of natural resources affected by the spill.

Damage assessments for natural resources shall be coordinated by representatives from each of the trustee agencies with affected resources. These trustee agencies will work as a team to develop a single approach to the assessment process. The “NRDA Team” will consult with members of governments and interest groups from the affected area to address local concerns. Cooperative RP(s) may be invited to participate with the NRDA Team activities to develop one unified NRDA plan for public trust resources. A cooperative damage assessment could greatly minimize costs by eliminating parallel assessments by the trustees and the RP. However, due to the statutory responsibilities, the trustees must maintain management and oversight of any cooperative damage assessment.

A) NOAA REGULATIONS

The National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for NRDA of injuries resulting from a discharge of oil (15CFR Part 990). NOAA published the final rules on January 5, 1996 in the Federal Register (61 FR 440). These regulations supersede the Department of the Interior’s (DOI) NRDA regulations (43 CFR 11) implementing portions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et. seq.) (CERCLA) and the Clean Water Act (33 U.S.C. 1251 et. seq.) (CWA) for oil spills. Any assessment of damages prepared in accordance with the regulations promulgated by NOAA shall have the force and effect of a rebuttable of correctness presumption on behalf of the trustees.

In addition to the final NRDA rules, NOAA will provide guidance documents covering various aspects of the NRDA process. The NOAA Rules will have similar advantages to the DOI Rules but will be more specific oil-related injuries and the dynamics following an oil spill incident.

B) CALIFORNIA’S OIL SPILL PREVENTION AND RESPONSE ACT

The California Lempert-Keene-Seastrand Oil Prevention and Response Act (OSPRA) was enacted shortly after OPA 90. Under OSPRA, spillers are strictly held liable for damages, including

natural resource damages, resulting from a discharge of oil into marine waters of the State. Damages can be sought under federal or state law or both but may be claimed by trustees only once. Double recovery is not permitted. Hence, it is imperative with spills of significance that Federal and State trustees consider the interests of affected local governments and coordinate claims for all public trust natural resource damages. The monetary damages based on NRDA activities are compensatory in nature to the public, and therefore are separate from fines and penalties which are punitive to the responsible party.

C) CERCLA AND CLEAN WATER ACT

CERCLA, enacted in 1980, authorizes Federal and State governments and federally-recognized Indian tribes to act as public trustees of natural resources and pursue damages from the RP(s) for injuries to natural resources caused by release of a hazardous substance. Section 1321 of the Clean Water Act authorizes the trustees to assess damages to natural resources caused by a release of oil. Pursuant to CERCLA and CWA, the DOI promulgated the first NRDA regulations (“DOI RULES”) establishing procedures that trustees may follow. The procedures, as modified by *Ohio v. U.S. Dep’t of the Interior*, 880 R.2d 432 (D.C. Cir. 1989) and *Colorado v. U.S. Dep’t of the Interior*, 880 F.2d 481 (D.C. Cir. 1989) provide guidance for measuring injuries to natural resources and quantifying damages (dollars) for the injuries.

The DOI issued a revised final NRDA rule for Type B assessments on March 25, 1994 (59 FR 14262) and a proposed rule for economic valuation on May 4 1994 (59 FR 23098), in response to the Ohio decision. The DOI also issued a revised Type A (simplified) assessment rule on May 7, 1996 (61 FR 20560) The overall framework set forth in the DOI Rules is the basis for NOAA’s NRDA regulations. It is also important to understand the procedures and standards set forth in the DOI Rules because CERCLA still applies to oil spills in which the oil is mixed with a hazardous substance as defined in 42 U.S.C. 9601(14).

D) ASSESSMENT PROCEDURES

The assessment procedures set forth in the DOI Rules are not mandatory. However, they must be used by trustees to obtain a rebuttable presumption that a specific assessment of damages is correct. The DOI Rules set out two types of assessment procedures. The “Type A” procedure uses a computer model to calculate damages and is a simplified assessment process. The “Type B” procedure is more comprehensive and time consuming but may be tailored for individual cases.

Five steps are described in the DOI Rules for determining and quantifying injury to resources and assessing monetary damages. The steps include: (1) conducting an initial preassessment; (2) conducting a preassessment screen; (3) preparing an assessment plan; (4) conducting the assessment following either the “Type A” or “Type B” rules; and (5) preparing a post-assessment report. Although the regulations provide the option for the trustees to use either “Type A” or “Type B” procedures in a

given case, both may be employed in practice. The speed and simplicity of the “Type A” may prove useful for certain spills or types of injury, whereas the “Type B” procedure may be used if a full assessment is warranted.

NOAA has identified three phases to a damage assessment: (1) preassessment; (2) Restoration Planning; and (3) Restoration Implementation. If injuries to natural resources or the services provided by natural resources are expected to continue following response actions, and feasible restoration alternatives exist to address those injuries, then trustees may proceed beyond the Preassessment phase to Restoration Planning and Implementation.

E) INJURIES AND LOST SERVICES

Initial steps in the NRDA process require documentation of a pathway for the spilled oil, demonstration of oil exposure (direct and indirect) with specific resources along the pathway, and quantification of the injuries caused by the spilled oil. Natural resources and/or the services provided by such resources may be injured or disrupted through direct or indirect exposure to released substances.

The methods used to assess the injuries arise largely from scientific practices and best professional judgement. The DOI Rules and proposed NOAA Rules provide guidance on specific types of biological injuries (e.g., death, physiological malfunctions such as decreased reproductive capacity) that may be used to claim damages. The scope of possible injuries extends beyond impacts to single organisms and may include effects on populations, habitats, and ecosystems.

“Services” include physical and biological functions provided by the natural resources to the ecosystem as well as other functions related to human use of the resources. Production of food, protection from predators, maintenance of community diversity, and provision of habitats are examples of some services provided to the ecosystem or its constituents. Examples of services provided to humans by natural resources include recreational opportunities such as fishing, wildlife viewing and beach activities. Other services provided by resources to humans are often less visible and can relate to the knowledge that a resource exists and is healthy or will continue to exist for the benefit of future generations. Although lost services due to injuries to specific resources may be qualitatively described with relative ease, quantitative assessment of losses and subsequent assessment of monetary damages requires rigorous scientific methods.

F) PRELIMINARY DAMAGE ESTIMATES

Expected damages should be estimated as soon as possible to determine the scope of the case and the prudence of undertaking certain types of studies. Preliminary damage estimates should include (1) the reasonable costs of injury assessment, (2) the cost of restoring, rehabilitating, replacing or

acquiring the equivalent of the injured resources, and (3) the value of interim losses including both direct use (e.g., commercial, recreational) and passive use (e.g., existence value) of resources pending restoration or natural recovery.

G) NRDA PROCESS

Successful pursuit of NRDA actions, either by the trustees alone or in cooperation with the RP(s), is a complex process comprising numerous tasks that generally involve the interaction of scientists, economists, lawyers, and administrators. The DOI Rules and NOAA Rules reduce some of the complexity by establishing an assessment process and providing a mechanism for determining the merits of going forth with the assessment and claim. The process provides a record of the trustee's decisions.

Other advantages to following the federal regulatory assessment process may warrant its use. The rebuttable presumption afforded by following the DOI Rules and NOAA Rules, shifts the burden of proving that the trustees' determinations is incorrect to the RPs. Additionally, these rules provide national standards on injury measurement, and describe methods for quantifying natural resource injuries into monetary values, and assist trustees in planning restoration of impacted resources.

(3) NRDA AND THE ICS

The Incident Command System (ICS) is an organizational framework designed to efficiently and effectively manage personnel and resources during emergency incidents. The system is designed to be adaptable to any size event, and can be changed in structure to conform to the needs of the response. One objective of the ICS is to reduce or eliminate the duplication of efforts by the numerous response agencies while attempting to control or contain the spill and mitigate possible impacts of the spilled oil. A small group consisting of the On Scene Coordinator (OSC), the Incident Commander (IC), and a representative of the RP form the Unified Command (UC), which coordinates and directs the actions of the response.

Concerns of the affected local governments related to spill response or clean-up are generally presented to the UC through a Multi-Agency Coordination (MAC) group representative. The local government claims for spill damages associated with services provided by natural resources should be coordinated with the Trustee NRDA Team to avoid overlap within assessments. For additional details on the ICS consult Annex B, Appendix II of this Area Contingency Plan.

Assessment of injuries and damages resulting from spilled oil need to begin as soon as possible following the initial release of the pollutant. This necessitates that NRDA activities be conducted simultaneously with response efforts and coordinated through the UC. Portions of the NRDA process

should be integrated into the ICS to improve communication, expedite both response and NRDA activities, and make efficient use of personnel and equipment. To avoid potential conflicts in duties, it is recommended that members of the NRDA Team not have responsibilities for the spill cleanup or general response activities.

The primary role of the NRDA Team is to document a pathway for the spilled oil, measure levels of injuries resulting from the spill, and determine damages. The UC, in contrast to the NRDA Team, focuses primarily on response, cleanup, and minimizing impacts of the oil spill. Although the UC and NRDA Team often have different responsibilities and needs, some of their activities overlap and require coordination. Examples of activities to be coordinated immediately following a spill include collecting samples (e.g., access to restricted sites, sampling prior to cleanup), gathering information pertinent to measuring actual or potential changes to natural resources, using equipment (boats, helicopters, etc.), communications, surveying spill sites, identification of protective measures and need for emergency restoration.

Uninterrupted communication between the UC and the NRDA Team is essential to ensure that response strategies selected by the UC are compatible to the maximum extent possible with the efforts and needs of the NRDA Team. Information concerning, for example, the spill trajectory forecasts, cleanup strategies, and beach and port closures should be made available to the NRDA Team to assist sample and data collection in a timely fashion. Conversely, information concerning potential injuries to natural resources caused by oiling or response techniques should be made available to the Planning Section before implementation of cleanup responses by the Operations Section.

The Eleventh District of the United States Coast Guard (USCG) recognizes NRDA Representatives as Technical Specialists to the Planning Section of the incident command. It is important to note that the RP is part of the UC but may not necessarily be part of the trustee's coordinated NRDA activities. For this reason, the NRDA Team must remain separate from the ICS to ensure that statutory responsibilities of the trustees are not compromised. The trustees retain the option of inviting the RP to participate in all or part of the damage assessment process. Some NRDA activities, however, are best coordinated through the UC. The NRDA Team will provide a Representative(s) to the Planning Section of the ICS to present the needs of the NRDA Team and other response information to the incident command. The NRDA Representative(s) will also act as historian or recorder of information critical for an accurate assessment of spill damages and will attend the daily operations meeting to secure knowledge of the up-to-date response activities.

(4) NOTIFICATION PROCEDURE FOR INITIATING NRDA ACTIONS

In the event of a spill, each trustee is responsible for notifying its own members of the NRDA Team. Individual federal, state, and local agencies may be notified through various channels depending on the size and location of the spill. In all incidents that might require NRDA action, the Office of Oil Spill Prevention and Response (OSPR) of the California Department of Fish and Game (CDF&G) will attempt to notify representatives from each of the trustee agencies expected to participate in the NRDA

process.

(5) IDENTIFICATION OF ADMINISTRATIVE TRUSTEE

Executive Order 12777 (October 22, 1991) requires the federal natural resource trustees to select a representative as the federal lead administrative trustee (LAT). In general, the LAT serves as the federal contact for all aspects related to damage assessment, resource restoration, and federal funding for NRDA activities. Depending on the resources affected and other relevant factors, it might be appropriate for most administrative duties to be undertaken by a lead trustee from a non-federal agency. In such cases, a LAT would still be selected to work with the representatives of the Oil Spill Liability Trust Fund to secure federal funds to initiate the damage assessment. All other administrative duties regarding damage assessment activities would be coordinated by the non-federal lead trustee. This lead trustee or trustee agency shall be selected by consensus of all participating trustees. The trustees will notify the Coast Guard of the LAT selection and, when applicable, non-federal lead trustee as soon as possible after an oil spill.

The trustees intend to execute a general Memorandum of Agreement (MOA) to coordinate their damage assessment and restoration activities. Among other things, the MOA will identify trustees, establish criteria for selecting the LAT, and provide procedures for decision making and monetary recoveries.

(6) FUNDING ISSUES

A) OIL SPILL LIABILITY TRUST FUND (OPA FUND)

The LAT will contact the OSC or his/her representative to secure money to initiate the assessment of natural resource damages following an oil spill. The LAT will provide an outline jointly agreed upon by the participating trustees describing funding needs and how such funds will be allocated among the trustees. Each participating trustee will provide documentation of all expenditures, costs and activities. The LAT is responsible for coordinating all such documentation to the representatives of the OPA Fund.

B) OIL SPILL RESPONSE TRUST FUND (CALIFORNIA STATE RESPONSE FUND)

If the federal funds are not available, or will not be available in an adequate period of time, and an RP does not exist or is unable or unwilling to provide adequate and timely payment for cleanup and damage assessment activities, the State Administrator for oil spill response may access the California State Response Fund. Money from the California State Response Fund may be use to cover state

damage assessment costs. For additional details on spill funding procedures see Annex C, Appendix I of this Area Contingency Plan.

C) CONTACTS WITH RESPONSIBLE PARTY(IES)

The trustee will need early access to representatives of the RP(s) to determine the availability of funding, personnel, and equipment for damage assessment activities. The LAT or non-federal lead trustee will first notify the appropriate representative of the USCG or UC and request a meeting between the trustees and the RP's representative. Should the USCG or UC fail to arrange a timely meeting, the trustees will establish contact directly with the RP's representative.

(7) PERMITS REQUIRED TO CONDUCT NRDA ACTIVITIES

Please refer to Annex J, Appendix II for information regarding permits required to conduct NRDA activities. The list of permits may be expanded in subsequent revisions to this document.

(8) SUPPORTING REFERENCES

CASES

- 1) Ohio v. United States Department of the Interior, 880 F.2d 432 (D.C. Cir 1989).
- 2) Colorado v. United States Department of the Interior, 880 F.2d 481 (D.C. Cir 1989).

REGULATIONS

- 3) 40 CFR 300.600 (Identification of Federal Trustees; CERCLA)
- 4) 40 CFR 300.605 (Identification of State Trustees; CERCLA)
- 5) 15 CFR Part 990 (NOAA's proposed NRDA rules)
- 6) 43 CFR Part 11 (DOI Rules - see 59 Fed. Reg. p. 14262 et. seq.)

STATUTES

- 7) Govt. Code Sec. 8670.1, et. seq. (OSPRA)
- 8) Title 14, California Code of Regulations, Section 679(d)
- 9) 33 U.S.C. 1251, et. seq. (Clean Water Act)
- 10) 33 U.S.C. 2701, et. seq. (Oil Pollution Act of 1990)
- 11) 42 U.S.C. 9601, et. seq. (CERCLA)

TAB E - LEAD ADMINISTRATIVE TRUSTEE ACCESS TO THE FUND

Incorporated into Appendix I, Tab D of this Annex.

APPENDIX II REQUIRED LETTERS AND REPORTS

TAB A - LETTERS

- 1. Notice of Federal Interest for an Oil Pollution Incident (Form CG-5549)
- 2. Notice of Federal Assumption
- 3. Letter of Designation of Source

The OSC is responsible for notifying the NPFC of the source of a discharge, actual or potential. The NPFC must also be notified if the source is not identified. Notification may be made by letter, Rapidraft, or message (POLREP or SITREP). The NPFC should be contacted for guidance on procedures, or with any questions relating to this.

4. Administrative/Directive Order

(To be distributed under separate cover)

TAB B - OSC REPORT

OSC Reports will be submitted as determined necessary by the RRT for a particular incident.

TAB C - POLLUTION REPORTS

POLREPS shall be submitted in accordance with the requirements outlined in Volume VI, Chapter 7.B.5.b of the Marine Safety Manual. The POLREP format can be found in Volume VII of the Marine Safety Manual, Figure 7-7.

TAB D - POLLUTION INVESTIGATIONS

INTRODUCTION

Several federal, state, and local agencies have a direct role in the enforcement of applicable laws and regulations associated with a discharge, or substantial threat of a discharge, of oil into the navigable waters of the U.S. The investigation into alleged violations of the many applicable laws and regulations requires a coordinated effort among the many agencies involved. As a preliminary step to enhance the effectiveness of investigative activities and limit the potential negative impact of these activities upon the cleanup and removal actions associated with an incident, the following agencies have been identified as having a direct, field-oriented role in the initial stages of these events.

INVOLVED AGENCIES

1. The United States Coast Guard. The U.S. Coast Guard has enforcement and investigative authority for a significant array of potential violations of federal laws and regulations, as well as enforcement actions under applicable international treaties. The principal, though not exclusive, federal laws and regulations associated with a discharge or a substantial threat of a discharge of oil include applicable components of the Clean Water Act as amended; the Oil Pollution Act of 1990; the Ports and Waterways Act; The Port and Tanker Safety Act; The Act to Prevent Pollution from Ships (1980), as amended; and, Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). In addition, authorities pursuant to 46 USC 7701 and 46 USC 6101 relate to personnel actions (licensed mariners), and marine casualties, respectively. The federal regulations associated with potential investigative or enforcement interest under these circumstances include, though are not limited to, applicable sections of 46 CFR with particular attention to Parts 4, 5, 16; 33 CFR Parts 126, 130, 151, 153-160; and 40 CFR Parts 116, and 117. Potential federal enforcement actions associated with a pollution discharge may include but are not limited to: collection of statements and evidence to determine the causes of the associated marine casualty, mandatory chemical testing of involved licensed personnel, and the collection of oil samples in the water and on suspect vessels.

2. The State of California, Department of Fish and Game, Office of Oil Spill Prevention and Response (OSPR). The Lempert-Keane-Seastrand Oil Spill Prevention and Response Act of 1990 (SB2040) details the role of the OSPR in spill investigations. OSPR is the lead investigative unit for state and local governments. As the lead agency, OSPR will coordinate the investigative efforts for these government agencies. Government Code Section 8670.7 specifically requires the Administrator of OSPR to determine the cause and the amount of a discharge. The investigative goals of OSPR are: to take samples and secure evidence relevant to the spill; conduct interviews of any person with special knowledge as to the facts of the spill and make arrests, if necessary and appropriate; determine and document the facts related to the cause of the spill; secure evidence relevant to determining the volume of oil spilled and the amount recovered; determine if a responsible party exists and whether or not the responsible party will take financial responsibility for the cleanup and containment of the spill; and, make an initial determination as to whether or not the facts of the investigation indicate a violation of state or local laws or regulations, and if they do, initiate criminal or civil actions through the appropriate legal jurisdiction(s). State authority extends anywhere within the state and out to three miles from the shoreline. However, “hot pursuit” and other legal principles allow OSPR to operate outside of this narrow area of authority.

3. State of California, State Lands Commission. The Lempert-Keane-Seastrand Oil Spill and Response Act of 1990 (SB 2040) details the role of the State Lands Commission (SLC) in spill investigations within the jurisdictional boundaries of the State of California. The investigative role of the SLC following a spill will be to assist the OSPR Administrator in determining the cause and amount of the discharge in accordance with California Government Code, Title 2, Chapter 7.4, Article 2, Section 8670.7(e). In addition, the SLC will be assessing the cause of the spill to determine the effectiveness of its regulations and spill prevention programs. The goal will be to change these regulations or programs as necessary to prevent or reduce the risks of similar occurrences in the future. SLC’s jurisdiction applies to marine terminals and offshore platforms within three miles of shore. Investigative activities may be necessary onboard a vessel if the circumstances are such that a vessel is involved in a discharge at or involving a marine terminal or offshore platform within 3 miles of shore.

4. State of California, Office of the State Fire Marshal, Pipeline Safety Division. The goal of this office is to provide pipeline safety within the jurisdictional boundaries of the State of California. California Government Code Sections 40400 - 52999, Chapter 5.5 of the California Pipeline Safety Act of 1981 has given the State Fire Marshal’s Office authority to respond to pipeline related offshore oil spills to determine compliance with pipeline safety regulations on construction, maintenance, and operations (normal, abnormal, emergency procedures, and cleanup responses). Sections 51015 and 51018 of the California Government Code specifically address inspections. Sections 51010, 51010.5, and 51010.6 pertain to jurisdictional pipelines, while Sections 51018.6 and 51018.7 provide civil penalties and criminal penalties, respectively by the California State Fire Marshal. For interstate pipeline spills, the California State Fire Marshal’s office acts as an agent for the US Department of Transportation, Office of Pipeline Safety (OPS) with enforcement ultimately administered by OPS.

5. United States Department of the Interior, Minerals Management Service (MMS). The MMS’s regulatory authority for accident investigation of offshore oil and gas facilities and related operations is based on the provisions in 30 CFR Part 250.19, Accident Reports (see also the OCS Lands Act Amendments, September 18, 1979, 43 USC 1801, Title II, Sec. 208, Sec. 22 (d) (1)). The MMS Manual states that the agency’s principal objectives in conducting accident investigations are:

“...to ensure consistent data collection and investigation of accidents in order to gather the information necessary to determine the cause(s) and to make appropriate recommendations for any corrective action needed. The primary goals are to prevent the recurrence of accidents, to enhance the safety of operations, and to protect the environment.” (MMS Manual, Program Series, Part 640, Rules and Operations, Chapter 3, Accident Data Collection and Investigation, August 3, 1992). The MMS manual further states in Chapter 3.3.(A.) that “unless otherwise specifically ordered by the Director, all investigations...shall be fact-finding proceedings with no criminal issues and no adverse parties. The purpose of the investigation is to prepare a public report.” An August 29, 1989 Memorandum of Understanding (MOU) between the MMS and USCG provides guidelines for convening accident panels and coordinating accident investigations between the two agencies.

6. Local Enforcement Authorities. Depending upon in which jurisdiction a discharge occurs, a number of local agencies may have investigative roles. As an example, the Los Angeles-Long Beach port complex maintains local Tariff regulations and enforcement authorities which are enforced by the ports themselves through their respective law enforcement entities; the Los Angeles Port Police and the Long Beach Harbor Patrol. Other local concerns, such as counties and cities through their respective Harbor Departments or Health Agencies, may be directly involved as the circumstances of the situation dictate.

7. The County District Attorney’s Office. Depending upon the location of the incident, the respective District Attorney’s Office may have a direct investigative role. For example, in Los Angeles County, the Environmental Crimes Division of the Los Angeles County District Attorney’s Office has jurisdiction over felony (or misdemeanor, in some cases) prosecutions under the California Government Code. This task requires the ability to promptly investigate marine petroleum spills, and to do so without interference from counsel or other representatives of the suspect entity or individual(s). The District Attorney’s focus is on criminal investigations, which are distinct from civil natural resources damages actions. The latter are typically brought by the California Attorney General. Natural resource damage investigations are not the subject of this Appendix.

8. The City Attorney’s Office. Each city in which an incident occurs, or in which the impact of an incident may be directly felt, may have a direct investigative role. For example, in the City of Los Angeles, the Environmental Protection Unit - Special Operations Division of the Los Angeles City Attorney’s Office serves as the legal advisor to all City Departments and Bureaus involved in the investigation of environmental crimes. The City Attorney’s Office has the authority to provide legal advice to the aforementioned personnel through the Los Angeles City Charter. The various City Departments and Bureaus also derive their investigative authority from the City Charter and State General Laws which are also known as police powers. Special Operations attorneys provide advice on search and seizure issues which may arise out of the initial criminal investigation of a local marine petroleum oil spill and which may involve any of the city’s law enforcement and regulatory personnel.

Other federal, state, or local agencies may have a direct, field-oriented investigative role concerning a discharge or substantial threat of a discharge of oil, as circumstances dictate.

GUIDING PRINCIPLES

The following general statements summarize the primary guiding principles associated with these direct, field-oriented investigations.

1. Investigative and response actions must interfere with each other as little as possible. Investigative efforts often involve the collection of evidence in a timely manner. This requires investigative efforts and evidence gathering during the high-intensity emergency phase of removal actions. Every effort must be made to coordinate investigative activities to minimize the impact on response and removal efforts. Simply separating investigative and removal functions amongst distinct and different individuals or groups serves to mitigate any potential interference one activity may have on the other. Conversely, individual investigators must understand the concerns of those directing response efforts to minimize the impact of the incident on public health, welfare, and the environment.

2. Coordination of investigative activities is very important where possible. Any number of mechanisms exist to coordinate efforts on-site during an incident. Periodic coordination meetings greatly enhance command, control, and communications amongst different parties. Lead agencies may carry the dual role of conducting an investigation and coordinating these meetings.

3. Investigations into, for example, cause, liability, and violations of applicable laws and regulations are a reality. The various federal, state, and local agencies discussed above will be involved in an investigative role as applicable.

4. Investigative roles, efforts, and degree of interest will vary from incident to incident. Investigative interest and activity will be a function of the scope, size, impact, location, and causes of the incident.

5. Understanding each agency's role increases the efficiency of investigative activities. There is a need for a strong commitment to develop necessary interagency understandings and working agreements which contribute towards this goal. In addition, these efforts would facilitate the smooth acquisition of necessary information and evidence on an ongoing basis. The emphasis on this element is to make these improvements before an incident occurs.

NOTIFICATION OF FEDERAL ASSUMPTION OF RESPONSE ACTIVITIES

U.S. Department
of Transportation
United States
Coast Guard



Commanding Officer
U.S. Coast Guard
Marine Safety Office
San Francisco Bay

Building 14
Coast Guard Island
Alameda, CA 94501-510
Phone: (510)437-3073

NOTICE OF FEDERAL ASSUMPTION OF RESPONSE ACTIVITIES

16465

Gentlemen:

My letter of _____ notified you of Federal interest in an actual or potential pollution incident at _____ on _____, for which you are presently considered financially responsible.

You are hereby given notice that your actions to abate this threat and to remove the pollutant(s), and to mitigate (its/their) effects have been evaluated as unsatisfactory by the Federal On-Scene-Coordinator. Effective _____, the Coast Guard will conduct all response activities under the authority of section 311(c)(1) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(C)). Removal will be effected in accordance with the criteria of the National Oil and Hazardous Substances Pollution Contingency Plan and Federal regulations. You may then be billed for all actual costs incurred by the Federal government, as set forth in section 1002(B) of the Oil Pollution Act of 1990.

Should you require further information concerning this matter, you should contact the Duty Officer, U. S. Coast Guard Marine Safety Office, San Francisco Bay, California. The 24 hour telephone number is (510) 437-3073.

Sincerely,

On-Scene Coordinator's
Representative

Received and Acknowledged

Time and Date